

# **DECISION RECORD**

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### **LAKE HAVASU FIELD OFFICE Southwest Transmission Cooperative, Inc. Pesticide Use Permit Bullhead City, Arizona DOI-BLM-AZ-C030-2014-0028-EA**

I have reviewed the application, Environmental Assessment (EA), and have made a Finding of No Significant Impact (FONSI) for the Southwest Transmission Cooperative, Inc. Pesticide Use Permit proposal. Based on that review and the record as a whole, I approve the Proposed Action, with the following stipulations derived from mitigation measures in the EA and FONSI. In accordance with 43 CFR 2800 this Decision is in full force and effective immediately.

#### **Scoping and Public Involvement**

An interdisciplinary team analyzed the potential consequences of the Proposed Action during internal scoping held on April 15, 2014, for the Proposed Action. As a result of internal scoping and discussions, vegetation was analyzed in the EA.

#### **Land Use Conformance**

The Proposed Action complies with the *Lake Havasu Field Office Resource Management Plan* (RMP) approved on May 10, 2007 and is in conformance with the RMP, even though it is not specifically provided for. It is consistent with the following RMP objectives, terms and conditions:

The issuance of a PUP is consistent with BLM's vegetation treatments identified in the RMP, Appendix F Page f-6, which states "BLM would use EPA-approved herbicides in accordance with EPA's Endangered Species Pesticide Program covered in BLM's Vegetation Treatment on BLM Lands in Thirteen Western States FEIS (May 1991) and further limited to those approved for use by the Arizona Record of Decision (Page 3, ROD, July 1991). These herbicides are Atrazine; Bromacil; Bromacil + Diuron; Chlorsulfuron; Clopyralid; 2,4-D, Dicamba; Dicamba + 2,4-D; Diuron; Glyphosate; Glyphosate + 2,4-D; Hexazinone; Imazapyr; Mefluidide; Metsulfuron Methyl; Picloram; Picloram + 2,4-D; Simazine; Sulfometuron Methyl; Tebuthiuron; and Triclopyr. Treatments will follow Standard Operating Procedures on pages 1-19 through 1-32 and project design features on pages 1-33 through 1-37 of the FEIS."

## **Authority**

Implementation of the Proposed Action is under the authority of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732) and the Vegetation Treatment Using Herbicides on BLM Lands in 17 Western States Programmatic Final Environmental Impact Statement, approved September 2007.

## **Special Stipulations**

1. All BLM-approved herbicides and adjuvants would be applied according to their label instructions. The instructions include effective application rates for specific noxious weed species, and non-treatment buffers around water bodies and water sources.
2. The applicator must have all appropriate licenses and permits to purchase and apply herbicides and adjuvants, and operate needed equipment.
3. State protected plant species (all cactus, ocotillo and native trees) shall be avoided; if they cannot be avoided they will be salvaged and replanted after construction within the right-of-way boundaries or another location determined by the LHFO Wildlife Biologist. The holder shall report all State protected species destroyed or damaged to the LHFO Wildlife Biologist.
4. No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*) shall be used, produced, transported, released, disposed of, or stored within the right-of-way area at any time by the holder. The holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the holder or third parties in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.

The holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the right-of-way potentially affecting the right-of-way of which the holder is aware.

As required by law, holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the right-of-way.

5. The holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state

law exists on the effective date of the right-of-way), the United States against any liability arising from the holder's use or occupancy of the right-of way, regardless of whether the holder has actually developed or caused development to occur on the right-of-way, from the time of the issuance of this right-of-way to the holder, and during the term of this right-of-way. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the holder, its agents, contractors, or third parties. If the liability is caused by third parties, the holder will pursue legal remedies against such third parties as if the holder were the fee owner of the right-of-way.

Notwithstanding any limits to the holder's ability to indemnify and hold harmless the United States which may exist under state law, the holder agrees to bear all responsibility (financial or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the holder's use or occupancy of the right-of way regardless of whether the holder has actually developed or caused development to occur on the right-of-way from the time of the issuance of this right-of-way to the holder and during the term of this right-of-way.

### **Rationale**

Under the Proposed Action, the issuance of the SWTC PUP would not have significant effects to the human environment and the Finding of No Significant Impact is hereby incorporated by reference. The decision to allow the Proposed Action does not result in any undue or unnecessary environmental degradation, and is in conformance with the *Lake Havasu Field Office Resource Management Plan*.

### **DECISION**

It is my decision to authorize the Proposed Action as described in Environmental Assessment DOI-BLM-AZ-C030-2014-0028-EA. The Proposed Action will be subject to the stipulations attached to this environmental assessment.

### **APPROVED**

/s/Kimber Liebhauser Authenticated by S. Ahrens  
Kimber Liebhauser, Field Manager  
Lake Havasu Field Office

9/11/14  
Date

## **APPEALS**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4. If an appeal is taken, your notice of appeal must be filed in the Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406 within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the Lake Havasu Field Office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### **Standards for Obtaining a Stay**

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.